

AUG 04 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GURSHARAN SINGH PANNU,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 05-70422

Agency No. A42-385-535

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Argued and Submitted July 27, 2006
San Francisco, California

Before: T.G. NELSON, SILVERMAN, and RAWLINSON, Circuit Judges.

The full range of conduct encompassed by California's indecent exposure statute, Cal. Penal Code § 314, does not constitute a categorical crime of moral turpitude under 8 U.S.C. § 1227(a)(2)(A)(ii). *See Cuevas-Gaspar v. Gonzales*, 430 F.3d 1013, 1017 (9th Cir. 2005); *cf. Rodriguez-Herrera v. INS*, 52 F.3d 238, 240

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

(9th Cir. 1995) (listing examples of crimes that we have found “involve moral turpitude.”) (citations omitted). For example, to be convicted of indecent exposure under California Penal Code § 314, “there is no . . . requirement that [a] person actually must have seen the defendant’s genitals.” *People v. Carbajal*, 114 Cal. App. 4th 978, 986 (2003).

Accordingly, we grant the petition for review and remand to allow the Board of Immigration Appeals to apply the modified categorical approach or to consider whether the failure to register as a sex offender under California Penal Code § 290(g)(1) is a crime of moral turpitude. *See INS v. Ventura*, 537 U.S. 12, 16-17 (2002) (per curiam); *see also United States v. Hernandez-Castellanos*, 287 F.3d 876, 881 (9th Cir. 2002).

PETITION GRANTED; REMANDED.